IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

OP.No. 8661 of 1999(F)

PETITIONER:

PEARL FOODS PRODUCTS,
ERAMALLOOR, ALAPPUZHA,
REPRESENTED BY ITS
GENERAL MANAGER.

BY ADV. SRI.B.S.KRISHNAN (SR.)

RESPONDENTS:
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1. THE GENERAL SECRETARY,
CHERTHALA TALUK INDUSTRIAL
EMPLOYEES UNION, CITU,
AROOR.

2. THE LABOUR COURT, KOLLAM.

ADDL. 3. STATE OF KERALA REPRESENTED BY
SECRETARY, DEPARTMENT OF REVENUE,
THIRUVANANTHAPURAM.

BY ADV. SRI.P.RAMAKRISHNAN

(ADDIONAL R3 IMPLEADED AS PER ORDER DATED 23.9.04 IN CMP 12563/04)

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP.No. 8661/1999(F)

ORDER ON I.A. NO.12562/2004 & CMP NO.14424/1999 IN OP NO.8661/1999.

DISMISSED

Sd/-

12.11.07 S.SIRI JAGAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF THE REFERENCE ORDER GO(RT)818/92/LBR DT.28.3.92 OF GOVT. OF KERALA TO THE LABOUR COURT, KOLLAM.

EXT. P2: COPY OF DEMAND NOTICE OF THE UNION TO THE DISTRICT LABOUR OFFICER, ALAPPUZHA.

EXT. P3: COPY OF THE CLAIM STATEMENT OF THE UNION DT.30.7.92.

EXT. P4: COPY OF THE COUNTER STATEMENT OF THE MANAGEMENT DT.27.8.92.

EXT. P5: COPY OF THE REJOINDER FILED BY THE UNION DT. 15.7.93.

EXT. P6: COPY OF THE ARGUMENT NOTES SUBMITTED BY THE MANAGEMENT BEFORE THE LABOUR COURT.

EXT. P7: COPY OF THE CERTIFIED COPY OF AWARD OF THE LABOUR COURT DT.28.7.98.

RESPONDENT'S EXHIBITS:

EXT. R1(A): COPY OF THE NEWS PUBLISHED IN DESHABHIMANI DAILY DATED 5.9.2004.

/TRUE COPY/

P.A. TO JUDGE

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S.SIRI JAGAN, J.

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O.P. No. 8661 of 1999

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Dated this the 12th day of November, 2007

JUDGMENT

The management in ID No.48/92 before the Labour Court, Kollam is the petitioner herein. The petitioner is challenging Ext.P7 award passed by the Labour Court in that ID. The issue referred for adjudication was denial of employment to one Sri.Ouseph. The contention of the management was that the petitioner was transferred to the Marine Products Division of the management wherein the worker refused to join and therefore, there was no denial of employment but only voluntary abandonment of employment. The labour court found that on 17.10.89 as usual the workman reported for duty and when he tried to enter factory premises of M/s.Pearl Food Products the security personnel prevented him from entering the premises which the workman treated as denial of employment, pursuant to which an industrial dispute arose. Therefore the only question to be decided by the labour court was whether the workman could

have been validly transferred to the so called Marine Products Division of the petitioner management.

2. Admittedly the workman involved was appointed in M/s.Pearl Food Products industries which is a factory engaged in the manufacture of biscuits. The labour court found that the so called transfer was in fact to another establishment by name Sea Pearl Industries. The labour court also found that M/s.Pearl Food Products had an agreement with M/s. Sea Pearl Industries for processing Marine Products in the plant owned by M/s.Sea Pearl Industries for export purposes for a period of 2 years which agreement expired on 30.6.90. The labour court also found that M/s.Pearl Food Products and Sea Pearl Industries are two separate establishments although there is a mention in one of the documents that the ownership of these two establishments vested in the same individual(s). The labour court further found that as is evident from the endorsement of the General Manager of the District Industries Centre, Alleppey in Ext.M2 certificate of Registration there was an agreement between M/s. Pearl Food Industries and Sea Pearl Industries for processing Marine Food

Products for a period of 2 years up to 30.6.90. There was no evidence regarding extension of the said agreement. As such, as the evidence stands in the ID M/s.Pearl Food Products and M/s.Sea Pearl Industries are two separate establishments. Admittedly workman involved in the industrial dispute was appointed in M/s.Pearl Food Products. There is no evidence adduced by M/s.Pearl Food Products to prove that they have in fact started any Marine Division elsewhere. The only evidence is to the effect that they had an agreement with another establishment by name M/s. Sea Pearl Industries for the processing of Marine food. No evidence has been adduced by the management to show that as per the service conditions of the workman involved in the industrial dispute, he is liable to be transferred to another establishment. Now the only contention raised in that behalf is that alongwith the workman, 4 other workers were also transferred who accepted the transfer without any objection. The fact that 4 other workers chose to accept the transfer or appointment cannot govern the rights of the workman in question. The evidence shows that workman was appointed in M/s.Pearl Food Products and therefore, unless the

management succeed in proving that M/s.Sea Pearl Industries is another establishment under the same management to which the workman could have been validly transferred, it cannot be held that the non joining by the workman in M/s.Sea Pearl Industries would amount to voluntary abandonment of employment. In the above circumstances, I do not find anything perverse in the findings entered by the Labour Court on the basis of evidence before it, without which I cannot interfere with Ext.P7 in exercise of my jurisdiction by Article 226 of the Constitution of India. Therefore the original petition is dismissed.

Sd/-
S.SIRI JAGAN,
JUDGE

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